PCIA Personal Communications Industry Association

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April 10, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554
STOP CODE: 1170

Re: Ex Parte Communication In
WT Docket No. 96-6

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, I am filing an original and one copy of this letter to report an oral ex parte communication in the above-referenced proceeding. On behalf of the Personal Communications Industry Association ("PCIA"), Robert Cohen and I met with David Furth, Acting Chief of the Commercial Wireless Division and members of his staff, Sandra Danner and Jane Halprin, yesterday to discuss issues raised in PCIA's comments in the referenced proceeding. Attached are materials that were reviewed and discussed during the meeting.

Due to delays in returning to PCIA's office following the meeting, this filing is being made the following day. Please call me if you have any questions regarding this notice.

Respectfully submitted,

Robert L. Hoggarth/ec

Robert L. Hoggarth
Director, Regulatory Relations

cc: Sandra Danner
David Furth
Jane Halprin

No. of Copies rec'd 0+1

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PCIA *Personal Communications Industry Association*

CMRS LICENSEE PROVISION OF FIXED SERVICES -- WHETHER LOCAL LOOP OR OTHERWISE -- SHOULD BE TREATED UNDER THE SAME REGULATORY SCHEME AS CMRS MOBILE SERVICES
WT DOCKET NO. 96-6

Section 332 Gives the Commission Plenary Authority Over the Fixed Service Offerings of CMRS Carriers. With the enactment of Section 332(c) of the Communications Act, Congress deliberately chose a federal regulatory framework to apply to all commercial mobile radio services ("CMRS"). Because CMRS services "by their nature, operate without regard to state lines . . .,"[1] such services were specifically exempted from the dual federal and state regulatory regime originally established to govern interstate and intrastate services. Congress' intent was to create a seamless federal regulatory framework for CMRS providers. Thus, if CMRS carriers are subject to multiple layers of regulation based on the make-up of their service offerings at any given point in time, Congress' goal of achieving regulatory parity and uniformity in rate and entry regulation would be thwarted. Moreover, CMRS carriers' ability to add value to their mobile service offerings by marketing a menu of services, including fixed wireless loop service, would be severely restricted.

A handful of parties argue that wireless local loop services offered as an integral part of CMRS services by a CMRS provider do not qualify as mobile services and thus, are not exempt from state rate and entry regulation. However, by defining "mobile service" as "any service for which a license is required in a personal communications service established pursuant to the [PCS] proceeding . . . or any successor proceeding," Congress made clear that all PCS services, whether they are fixed or mobile in nature, are to be defined as CMRS and regulated under Section 332. Consistent with the federal mandate to promote regulatory parity, the FCC is required to treat all other CMRS offerings in the same manner.

Several parties assert that all local loop services must be subject to comparable regulation, or else the Commission is promoting regulatory discrimination based on technology. Congress, however, has directed in Section 332 that CMRS be subject to federal regulation as described above. Arguments about technology-based discrimination do not affect the congressional mandate. In addition, in other contexts and under other sections of the Communications Act, the Commission has concluded that different types of carriers providing similar services may warrant different levels of regulation.

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[1] Budget Act House Report at 260; *cf.* H.R. Rep. No. 103-213, 103rd Cong., 1st Sess. 494 (1993).

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The Inseverability of Intrastate and Interstate CMRS Offerings Supports Federal Jurisdiction. While Section 332(c)(3)(A) of the Communications Act imposes no prohibition on state regulation of "other terms and conditions" of commercial mobile services, that jurisdiction remains subject to the "inseverability" doctrine. This doctrine, developed by the Supreme Court in *Louisiana PCS*, granted the FCC authority to preempt conflicting state rules where the Commission could not "separate the interstate and the intrastate components of [its] asserted regulations."[2] Where "compliance with both federal and state law is in effect physically impossible," federal law must prevail.[3]

State Regulation of CMRS Offerings Is Impermissible Under the Telecommunications Act of 1996. The FCC's proposal to subject fixed services offered by CMRS carriers to the same regulatory scheme as their mobile service offerings is consistent with the competitive policies recently adopted in the Telecommunications Act of 1996. New Section 253(a) of the Act states that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[4] As any state entry or rate regulation would violate Section 253(a) by effectively prohibiting the provision of fixed services by CMRS carriers, it would be subject to preemption pursuant to Section 253(d).[5] Moreover, the Telecommunications Act of 1996 specifically preserved the preemption provisions of Section 332(c)[6] and excluded CMRS providers from the definition of "local exchange carrier."[7] Thus, the Telecommunications Act of 1996 reaffirms Congress' intent that federal regulation supersede state law with respect to CMRS, however defined.

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[2] *Louisiana PCS*, 476 U.S. 355, 376, n.4 (1986).

[3] *Id.*, at 368.

[4] 47 U.S.C. § 253(a).

[5] 47 U.S.C. § 253(d).

[6] 47 U.S.C. § 253(e).

[7] 47 U.S.C. § 3(44).